



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Midwest Sales

Case No.: TR-00-0019

FINAL DETERMINATION

On February 24, 2000, Mr. Clifford Sobotta (Customer) filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Midwest Sales (Dealer). The claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals.

By letter dated April 25, 2000, the undersigned Administrative Law Judge (ALJ) advised the parties that he would issue a preliminary determination in this matter without a hearing. The preliminary determination was issued on June 15, 2000 and was based on the documents in the file as of May 9, 2000 and constituted the preliminary determination required by sec. Trans. 140.26(4)(a), Wis. Admin. Code.

Objection to the preliminary determination was heard from the Dealer on July 18, 2000 and a hearing was scheduled for and conducted on November 14, 2000 in Holmen, WI. The Dealer appeared at the hearing but the Customer made no appearance. In spite of the lack of representation from one party, testimony was received and nine exhibits were admitted.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Clifford Sobotta
660 East 6th Street
Winona, MN 55987

Midwest Sales
Terry Gilbertson
N7735 Amsterdam Road
Holmen, WI 54636

Peerless Insurance Co.
1225 Corporate Blvd., Suite 101
Aurora, IL 60504

FINDINGS OF FACT

1. Midwest Sales (Dealer) is a motor vehicle dealer licensed by the Wisconsin Department of Transportation (Department) pursuant to Wis. Stats. § 218.01. The Dealer is located at N7735 Amsterdam Road, Holmen, Wisconsin, 54636.
2. The Dealer has had a surety bond in place since January 31, 1996 to the present. (Bond #30651259 from 1/31/96 to 2/2/99 from Fidelity and Deposit Company of Maryland, and bond # 01893-20-36 from 1/31/99 to 1/31/00 from Peerless Insurance Company)
3. Mr. Clifford Sobotta (Customer) filed a bond claim (exhibit 1) on his March 22, 1999 purchase of a 1996 Geo Metro LSI, VIN2C1MR2290T6744608 from Midwest Sales. This claim was filed on February 24, 2000 and is within three years of the ending date of the period the Peerless Insurance bond was in effect.
4. The customer did not sign the Wisconsin Buyers Guide (exhibit 2), although Mr. Gilbertson of Midwest Sales purportedly signed the document on February 17, 1999. This inchoate Wisconsin Buyers Guide lists a price of \$5,295 with a limited warranty of three months and 1000 miles. It also notes that a \$100 deductible and split costs with the customer on any repair during this period. It does not note any problem with the air conditioner or the brake system.
5. Midwest Sales was unable to produce a copy of the purchase contract for the automobile with the customer, but there was an invoice produced from Midwest Auto Body (exhibit 3), dated March 22, 1999, with notations that indicate the transaction was paid in full with check # 226667.
6. The price listed on the invoice for the '96 GEO Metro LSI is \$5,295 and is signed by Terry Gilbertson.

Also on the invoice are notations that state that "Midwest will repair and have the AC charged. The fee for this will be paid by Margaret Sobotta. The repair and charge will be paid even with no additional fees. This car will be on hold until the air is finished."

The customer paid \$172 for initial repairs of air conditioner and brakes done by Midwest Sales or its agent (exhibit 4). The repairs were not satisfactory and the customer incurred additional repair costs of \$1248.90 on June 11, 1999 (exhibit 5) and \$692.42 on June 23, 1999 (exhibit 6), totaling an actual loss of \$1941.32, according to receipts. The customer seeks a claim of monetary damages of \$1940. These repair costs were for the brakes and air conditioner.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth in Trans.140.21(1), Wis. Admin. Code, set out in part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

- (a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.
- (b) The claim arose during the period covered by the security.
- (c) The claimant's loss shall be caused by an act of the licensee, or the licensee's agents or employees, which is grounds for suspension or revocation of any of the following:
 - 1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. [218.01](#) (3) (a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats.
- (d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow Mr. Sobotta's claim, a finding must be made that the Dealer violated a provision of the Wisconsin statutes enumerated in Trans. 140.21(1)(c)(1), Wis. Admin. Code. The other requirements have already been found as fact in the preceding analysis.

The failure of the Dealer to have the customer sign the Wisconsin Buyers Guide is a violation of Trans. 139.04(6), Wis. Admin. Code. Specifically, it states:

- 1. WISCONSIN BUYERS GUIDE. (a) . . .The original guide shall be signed by the dealer or a salesperson prior to separating the copy for display. The copy shall be displayed within the vehicle, attached to a window except where not possible, and shall be readable from the outside, or attached to motor driven cycles, and it shall become the possession of the purchaser upon delivery. *The original shall be signed by the purchaser prior to delivery of the motor vehicle* and shall be retained by the dealer for 5 years.. Trans. 139.04(6), Wis. Admin. Code (emphasis added).

The Wisconsin Buyers Guide requires a customer signature for an elemental reason: to provide the buyer notice of what is wrong, if anything, with the auto. Without a customer signature, the most basic notice requirement for auto consumers has been ignored.

Note that it is the responsibility of the Dealer to retain the Wisconsin Buyers Guide for 5 years. The Dealer did not rectify this situation by producing a valid Wisconsin Buyers Guide when it is clearly his responsibility to do so. The Dealer admitted to this conduct in the hearing.

An accompanying provision further notes that “it is an unfair practice for a dealer to not remedy an item improperly reported on the guide that the dealer could have found using reasonable care if the buyer has notified the dealer within a reasonable time after the buyer discovered or should have discovered the improperly reported item and the vehicle is made available to the dealership,” Trans. 139.04(5), Wis. Admin. Code.

With the unsigned Wisconsin Buyers Guide containing no indicia that the air conditioner or the brakes were suspect, it is clear that these infirmities were improperly reported, if they were reported at all. The customers appropriately notified the dealer at the time of purchase and the vehicle was made available for repair, but the problems were not remedied. In fact, both problems to the brakes and air conditioning persisted. These are not optional accoutrements of an automobile – they provide riding comfort and at more basic level, make it stop. I find that the Dealer engaged in an unfair practice as defined in Trans. 139.04(5), Wis. Admin. Code.

Further, the failure to provide a motor vehicle purchase contract is also a violation. Under Trans. 139.05(1), Wis. Admin. Code:

All dealer and salesperson licensees shall furnish retail purchasers with a copy of a document clearly entitled "Motor Vehicle Purchase Contract" that clearly notifies the prospective retail purchaser on its face that the purchaser is making an offer to purchase that shall become a binding motor vehicle purchase contract if accepted by the dealer licensee . . .

In this case, the Dealer provided an invoice but did not provide the customer a Motor Vehicle Purchase Contract as required. Trans. 139.05(2) provides numerous requirements that must be in the Motor Vehicle Purchase Contract that were wholly ignored on the invoice document. This is a violation of Trans. 139.05, Wis. Admin. Code.

With these violations of maintaining a Motor Vehicle Purchase Contract and Wisconsin Buyers Guide as required in these regulations for licensure, it is clear that the Dealer has violated Wis. Stats. § 218.01(3)(a)(14). This fulfills the requirement in Trans. 140.21(1)(c)(1), Wis. Admin. Code and allows a claim.

At the hearing, however, the Dealer made convincing arguments that the remedy, a full reimbursement of invoiced repair costs, was inappropriate. Therefore, the order from the preliminary determination determining the amount to be paid is modified to reflect the costs of repairing the air conditioning in exhibits 5 and 6.

CONCLUSIONS OF LAW

1. Mr. Clifford Sobotta's claim arose on March 22, 1999, the date he purchased the 1996 Geo Metro LT from Midwest Sales. The surety bond issued to Midwest Sales by Peerless Insurance Company was in effect at this time. The claim arose during the period covered by the surety bond.
2. Mr. Sobotta filed a claim against the motor vehicle dealer bond of Midwest Sales on February 24, 2000. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Trans. 140.21(1)(d), Wis. Admin. Code, the claim is timely.
3. Mr. Sobotta's monetary loss was caused by an act and omissions of Midwest Sales, namely the failure to disclose the air conditioning and brake problems on a Wisconsin Buyers Guide, the failure to implement an appropriate purchase contract, and the failure to rectify the problems when notified. These are grounds for revoking a motor vehicle dealer license. Mr. Sobotta has submitted documentation to support a claim of \$1,940. Pursuant to sec. Trans. 140.21(1)(c), Wis. Admin. Code, this claim is allowable.
4. The Division of Hearings and Appeals has authority to issue the following order.

FINAL ORDER

IT IS HEREBY ORDERED that Peerless Insurance Company pay Mr. Clifford Sobotta in the amount of \$324.68 for the approved motor vehicle bond claim for losses attributable to the actions of Midwest Sales.

Dated at Madison, Wisconsin on March 8, 2001.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
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By: _____
BRIAN K. HAYES
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of secs. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.